

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 95 (SS) OF 2000

Mahipal Singh Bhandari, S/o Sri Harish Chandra Bhandari,
R/o Village Gunehi, P.O. Dongoli, The and District Bageshwar.
.....Petitioner.

Versus

1. State of Uttaranchal through Registrar Cooperative Society, Uttaranchal, Dehradun.
 2. District Magistrate, Bageshwar.
 3. Distt. Asstt. Registrar Co-op. Society, Almora.
 4. Asstt. Development Officer, Tehsil & District Bageshwar.
- Opp. Parties.

Mr. M.C. Kandpal, Sr. Advocate for the petitioner.
Sri M.S. Negi, Learned Advocate General.

Dated : 31.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the opposite parties to pay the balance amount of the petitioner due on the society from 1st Jan. 1995 to 28th June, 2000. Further prayer has been made for a writ of mandamus directing the respondent authorities to let the petitioner continue on the post of Sahkari Kurk Amin Vikas Khand, Garur Distt. Bageshwar and presume him in service from the date of termination of service i.e. from 28th June, 2000 and he may be permitted to join on the post.

Briefly stated, the petitioner was appointed on the post of Sahkari Kurk Amin Vikas Khand, Garur Distt. Bageshwar by Distt. Asstt. Registrar Almora. The said appointment was

approved by the District Magistrate, Almora on 22.01.1992 and directed the petitioner to join the duty. The petitioner was given charge by the authorities on 06.03.1992.

According to the petitioner, he had worked continuously but from 1st Jan. 95 to 28th June, 2000 he is not being pay any amount due on the society on the basis of the collection.

Learned Counsel for the petitioner has submitted that in a Special Appeal, the Lucknow Bench has decided that the Sahkari Kurk Amin are treated at par with the Govt. servant and are paid the regular salary.

Regarding his grievance, the petitioner made a representation to the District Magistrate Bageshwar on 03.05.2000 stating that the authority are making the recovery to the revenue department ignoring the services of the Sahkari Kurk Amin.

The authority handed over a list of ten defaulters, who did not pay any money from 1992 for recovering the amount and directed him to recover the amount from the defaulters within fifteen days. The defaulters did not pay the amount for a long time, but the petitioner tried his best to recover the amount. The authorities issued a letter on 8th June, 2000 to the petitioner to hand over the charge.

In this respect the petitioner moved a representation before the authorities on 12.06.2000 and in pursuance of the order dated 08.02.2000, the petitioner handed over the charge to the petitioner on 28.06.2000.

Again the petitioner moved a representation on 09.10.2000 before the authority concerned regarding the submission of charge of Sahkari Kurk Amin and for payment of balance amount.

Learned counsel for the petitioner has submitted that despite the sincere efforts made by the petitioner, neither he

has been given the charge of Sahkari Kurk Amin, nor he has been paid the balance amount due on the society and the authority is not taking any work from the petitioner.

The grievance of the petitioner is that he is not being treated as a government servant and is not being paid the salary, which are given to the government servant as per the judgment passed in ***State of U.P. Vs. Chandra Prakash Pandey, AIR 2001 SC 1298***. The relevant observation of the Hon'ble Supreme Court in the aforesaid case are quoted below:--

"14. Likewise, in another detailed judgment under Civil Appeal No. 6075 of 1997 rendered by another Division Bench of High Court upon the matter being remanded by this Court, the Court after due consideration came to the following conclusion:-

"It is not disputed that the appointing authority in case of both is the District Magistrate/Collector, the power to terminate the service of both the categories vests in the same authority, they are amenable to same disciplinary authority, the nature of their duties is the same and they exercise similar power. The Kurk Amin appointed on Commission basis similarly enjoys and exercises the power to arrest a person, who is defaulter, can attach his property, which he can put to auction like his counter part on regular basis. A Kurk Amin on commission basis and on regular basis similarly follows the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1951 and U.P. Land Revenue Act, 1901 in so far as the recovery of land revenue.

One the District Magistrate issues a recovery citation both the sets of Kurk Amins in order to execute the recovery follow the same procedure and exercise the powers and they are under the control of one and same authority. The Kurk

Amin be on commission basis or on regular basis, get his salary form the Government exchequer out of 10 percenjt collection charges realized as arrears of land revenue. It is thus clear that both the sets of Kurk Amins work in the same capacity under the control of the State Governments and their appointment and duties fully comply with the tests laid down by the Supreme Court in the decision of State of Gujarat v. Raman Lal Keshav Lal Soni (1983) 2 SCC 33: (AIR 1984 SC 161 :1983 Lab IC 391).”

15. *From a bare perusal of the aforementioned decisions of the two different benches of the High Court it would be clear that after taking into consideration all relevant factors as laid down by this Court in its judgment referred to above, the High Court has come to the conclusion and recorded a finding of fact that Kurk Amins appointed on commission basis for recovery of outstanding dues of the Cooperative Societies were members of service and Government servants. On behalf of the State, it has not been challenged that the aforesaid statements of facts in the two judgments are incorrect. During the course of arguments learned senior counsel appearing on behalf of the State made an unsuccessful attempt to refer a scheme prepared by the Registrar of Co-operative Societies, but in view of the fact that neither any counter affidavit was filed before the High Court nor the said scheme was filed before this Court either along with the Special Leave Petitions or with any other affidavit, we are of the opinion that it is not possible for us to look into the said scheme as such the same can be of no avail to the State by its mere production in Court during the course of argument.”*

No counter affidavit has been filed in the case.

Looking to the grievance of the petitioner, a writ of mandamus is issued to the opposite parties to implement the order in its true spirit by according full status of holder of civil post with all consequential benefits like the Govt. Servants in view of the aforesaid judgment.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

31.3.2006

Rathour